to put the work in the condition the contract called for. *Ashley* v. *Henahan, supra.* More often it is said that the defendant shall be allowed full compensation for all damages suffered. *Aetna Iron & Steel Works* v. *Kossuth County,* 79 Ia. 40. In many cases the *quantum* of allowance would be the same. But in others, as in the principal case, where the expense of remedying the breach is decidedly out of proportion to the good attained, the rule of damages becomes vital. To apply the strict rule would be to admit the doctrine of substantial performance in words but deny it in substance. For full discussion see 2 WILLISTON ON CONTRACTS, § 842, and 24 L. R. A. (N. S.) 327.

EASEMENTS—EXTINGUISHMENT BY VOLUNTARY DESTRUCTION OF SERVIENT TENEMENT.—In 1852 the owners of adjacent lots constructed thereon a three-story building having a common entrance, stairways, and landings as sole means of access to the upper stories. Petitioner (for registration of land title), who has derived title to one of the lots, now proposes to remove his part of the building and rebuild without provision for continuing the existing access to the respondent's part. *Held,* although respondent has an easement through petitioner's building, gained by prescription, the easement may be extinguished by the voluntary destruction of the servient tenement. *Union Nat. Bank of Lowell* v. *Nesmith,* (Mass., 1921), 130 N. E. 251.

It is well settled that destruction of the servient tenement without fault of the owner extinguishes the easement. *Shirley* v. *Crabb,* 138 Ind. 200. That voluntary destruction has the same effect appears rather startling. The majority holding in the instant case is based on *dicta* in *Hubbell* v. *Warren,* 8 Allen 173, and *Cotting* v. *City of Boston,* 201 Mass 97, and the court's finding as to the intentions of the parties, viz., that the right should remain only so long as each party should desire to maintain his part of the building. It may be doubted seriously if the parties intended any such speculation. Some reasonable men, at least, would not care to leave the sole means of access to two-thirds of a building to the pleasure of an adjoining land owner. In the principal case, perhaps, no great loss was suffered by the respondent because of the age of the building, but the result would be the same apparently if the building were newly constructed. If the court had found for the respondent in respect to the intended duration of the easement the somewhat similar case of *Adams* v. *Marshall,* 138 Mass. 228, would indicate the likelihood of the respondent getting money damages rather than equitable protection of his easement. Seemingly the best explanation of the case lies in the settled hostility of the Massachusetts courts toward easements in structures. *McKenna* v. *Eaton,* 182 Mass. 346; *Walker* v. *Stetson,* 162 Mass. 86; *Allen* v. *Evans,* 161 Mass. 485.

EASEMENTS—SCOPE OF—RIGHTS IN ICE ON MILL-POND.—Defendant had a right to flowage over the plaintiff's land. Plaintiff had been accustomed to harvesting the ice forming thereon. The defendant with malice and with the sole intent of preventing the plaintiff from harvesting the ice opened the

sluice-gates whereby the ice was destroyed. The plaintiff sues for the destruction of the ice. *Held,* the plaintiff being the owner of the land under the pond had the right to harvest and sell the ice formed on the pond subject to the defendant's right to the reasonable use of the water; and as the act complained of was not reasonable the defendant was liable. *Taft* v. *Bridgeton Worsted Co.* (Mass., 1921), 130 N. E. 48.

The overwhelming weight of authority is in accord with the principal case to the effect that the owner of the bed of the mill-pond has, as an incident to that ownership, the right to cut the ice thereon, whenever the exercise of that right does not materially diminish the head of water to the detriment of the mill-owner. *Stevens* v. *Kelley* (1886), 78 Me. 445; *Eidmiller Ice Co.* v. *Guthrie* (1894), 42 Neb. 238; *Bigelow* v. *Shaw* (1887), 65 Mich. 341. In *Myer* v. *Whittaker* (1878), 55 How. Pr. (N. Y.) 376, an inferior court held that the one entitled to the flowage rights owned the ice. It is apparent from the opinion therein that the court considered that this right of flowage was for all purposes absolutely and did not consider the right of flowage as being limited to all purposes necessary to operate the mill. The court in *Myer* v. *Whittaker, supra,* relied upon *Mill River Woolen Mfg. Co.* v. *Smith* (1867), 34 Conn. 462, as supporting their holding. A later Connecticut court however cited the same case as an authority for the view that title to the ice was in the riparian proprietors. *Howe* v. *Andrews* (1892), 62 Conn. 398. The whole matter seems to resolve itself into one question: what was the scope of the easement granted to the mill-owner? If the right of flowage was for all purposes necessary for the operation of the mill the right of the mill proprietor is qualified; and the owner of the soil may harvest and sell the ice so long as the mill-owner is not materially interfered with in the operation of his plant. But on the other hand if the right given is for all purposes, the mill-owner gets an absolute interest in the water subject only to the rights of riparian proprietors *below* and could therefore, harvest the ice.

EJECTMENT—RIGHT OF VENDEE OF EXECUTORY LAND CONTRACT ENTITLED TO POSSESSION—VENDOR AND PURCHASER.—P., the vendee in an executory land contract, was ousted by D., the vendor, although not in default. P. brought ejectment. *Held,* equitable ownership with right to possession is sufficient to maintain ejectment. *Kingsworth* v. *Baker,* 213 Mich. 294.

The principal case seems to be a departure both from the rules of the common law requiring the legal title in the plaintiff to support the action, (*Langdon* v. *Sherwood,* 124 U. S. 74; see note in 18 L. R. A. 781), and also from the former Michigan cases such as *Harrett* v. *Kinney,* 44 Mich. 457; *Roman* v. *Lewis,* 39 Mich. 233; and *Carpenter* v. *Ingersoll,* 43 Mich. 433; and from the *dicta* in *Geiges* v. *Greiner,* 68 Mich. 153, and *Whiting* v. *Butler,* 29 Mich. 124. It is significant that a vendee under a mere contract to convey was allowed to oust his vendor having the legal title from possession by ejectment. Even under the code abolishing the distinction between actions at law and suits in equity, this remedy has been refused. *Peck* v. *Newton,* 46 Barb (N. Y.) 173. It would seem that under the court's decision the action